

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 14, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LANCE A. THOMASON,

No. 2:20-cv-00059-SMJ

Plaintiff,

ORDER DISMISSING ACTION

v.

YOKES FRESH MARKET,

Defendant.

By order filed June 3, 2020, the Court advised Plaintiff Lance A. Thomason of the deficiencies of his Complaint and directed him to amend or voluntarily dismiss it within sixty days. ECF No. 7. Plaintiff did not comply with this directive and has filed nothing further in this action. Defendant has not been served.

Plaintiff, a prisoner currently housed at the Washington Corrections Center, is proceeding *pro se* and *in forma pauperis* in this civil action under 42 U.S.C. § 1983. The complaint, which seeks monetary damages for Defendant's alleged failure to properly train its employees, fails to state a claim upon which relief may be granted.

Further, because Defendant is a private corporation, Plaintiff would have to allege facts showing (1) Defendant acted under color of state law, and (2) if a

1 constitutional violation occurred, the violation was caused by Defendant's official
2 policy or custom. *See Monell v. N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91
3 (1978); *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012). Plaintiff
4 has not presented facts showing that Defendant acted under color of state law or
5 that any constitutional violation was caused by its official policy or custom.

6 For the reasons set forth above and in the Court's prior order, ECF No. 7, the
7 Court dismisses Plaintiff's Complaint, ECF No. 1, with prejudice for failure to state
8 a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and
9 1915A(b)(1).

10 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
11 brings three or more civil actions or appeals that are dismissed as frivolous,
12 malicious, or for failure to state a claim will be precluded from bringing any other
13 civil action or appeal *in forma pauperis* "unless the prisoner is under imminent
14 danger of serious physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read**
15 **the statutory provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's**
16 **complaint may count as one of the three dismissals allowed by 28 U.S.C. §**
17 **1915(g) and may adversely affect his ability to file future claims.**

18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. Plaintiff's Complaint, ECF No. 1, is **DISMISSED WITH**
20 **PREJUDICE.**

- 1 2. The Clerk's Office is directed to **CLOSE** the file.
- 2 3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal
- 3 of this Order would not be taken in good faith and would lack any
- 4 arguable basis in law or fact.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,
6 enter judgment, and provide copies to Plaintiff at his last known address. The
7 Clerk's Office is further directed to provide a copy of this Order to the Washington
8 State Office of the Attorney General, Corrections Division.

9 **DATED** this 14th day of August 2020.

10 
11 SALVADOR MENDEZA, JR.
12 United States District Judge